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Supreme Court, U.S.
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NO. 92 -

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

C. CORNELIA RESHARD, ESQUIRE,

Petitioner

Versus

COMMITTEE ON ADMISSIONS
FOR THE DISTRICT OF COLUMBIA
COURT OF APPEALS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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176 PP

QUESTION PRESENTED

Whether the District of Columbia Court of Appeals violated freedom of political speech and due process of law when it required a formal hearing and denied Petitioner's application for membership in the District of Columbia Bar under D.C. App. R. 46 (c)(3)(ii), et seq.

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C.CORNELIA RESHARD petition for a Writ of Certiorari to the District of Columbia Court of Appeals to review the order filed on September 14, 1992, in Reshard v. Committee on Admissions, No. 92-SP-659.

OPINIONS BELOW

The order of the District of Columbia Court of Appeals was issued on September 14, 1992, No. 92-SP-659 (Terry, Schwelb, and King, Associate Judges). The order denied petitioner's application for admission to the District of Columbia Bar. It is unreported in the Appendix. App. at 1.

The court also issued an order requesting the Committee on Admissions (the "Committee") to file a recommendation on June 29, 1992. App. at 11. The Committee's Recommendations were filed on August 3, 1992. App. at 1-11.

The Committee issued the following letters: (1) A letter of April 30, 1990 which

authorized an informal meeting to discuss the application, bankruptcy petition, and student loan obligations (App. at 16); (2) a letter on February 5, 1991, official notice that the Committee would not certify the applicant without a formal hearing (App. at 17); and, (3) a letter on March 13, 1991, which renewed its notice of February 5, 1992 but with added detail (App. at 19).

In response to petitioner's request for declaratory judgment regarding First Amendment guarantee of freedom of speech and due process of law, the District of Columbia Court of Appeals granted the Committee's untimely Motion to Dismiss on August 16, 1991. App. at 4-5,15. Rehearing en banc or in the alternate, by the panel was denied on December 16, 1991. App. at 14.

JURISDICTION

This Court's jurisdiction to review the District of Columbia Court of Appeals Order of September 14, 1992 is invoked pursuant to 28 U.S.C. 1257. App. at 21-22.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

1. First Amendment Guarantee of Freedom of Speech, App. at 21.
2. Fourteenth Amendment, due process of law, App. at 21.
3. 28 U.S.C. 144, App. at 22.
4. 28 U.S.C. 455, App. at 22.
5. 28 U.S.C. 753(b), App. at 23.
6. 28 U.S.C. 1257, App. at 21.
7. Selected Sections of Rule 46, D.C. App. Rule, App. at 23-27.
8. Rules 1.3, 3.1, 3.3, 3.4, and 8.3 of the District of Columbia Bar Rules of Professional Conduct, App. at 27-31.

STATEMENT OF CASE

On July 31, 1989, petitioner filed an application for admission to the District of Columbia Bar pursuant to Rule 46 (c)(3)(ii), D.C. App. R. Under the section, an applicant who has successfully passed the bar examination and obtained a scaled score of 133 or more on the Multistate Bar Examination in another jurisdiction may upon proof of good moral character be admitted to the Bar of the District of Columbia. App. at 23-24. Petitioner is a member of the Bar of the Commonwealth of Pennsylvania and otherwise met the qualifications. The National Conference of Bar Examiners submitted a character report on January 23, 1990. (Record at 46).

On June 20, 1990, petitioner met informally with a subcommittee of the Committee. App. at 16-17. The meeting

focused entirely on the fact that petitioner had filed for bankruptcy shortly after the application had been filed. Petitioner's application had stated that petitioner had been wrongfully terminated as an economist in the Office of the Secretary of the United States Department of Transportation on January 4, 1988.[1]

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[1] Petitioner has an advanced degree in economics, and she began her professional career in 1970 as a college teacher. She taught economics for about ten years. She was hired as an economist by the U.S. Department of Transportation, Office of the Secretary in 1977. She began at the G.S. - 11 and was a G.M. - 14 from 1982 until she was fired. She is still unemployed. She holds a juris doctor degree from Georgetown University Law Center.

Petitioner explained that she had sued the agency for racial discrimination under 42 U.S.C. 2000 (e)(16) et. seq. on October 15, 1987 in U.S. District Court for the District of Columbia. Thereafter, she had unsuccessfully sought employment locally and nationally. Petitioner noted that she believed that she had been black-listed apparently by James Burnley (the formal secretary) because of the lawsuit, based on

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At the Department of Transportation, petitioner coordinated review of aviation administrative decisions that were required to be reviewed by the President; member of U.S. negotiating team for the negotiation, interpretation and administration of executive agreements (treaties); wrote regulations; and, wrote strategy papers for negotiations as well as performed economic analyses.

information obtained from a reliable, but confidential source.

According to the record, Charles Reischel, Committee counsel contacted the attorney of record, Assistant U.S. Attorney, William Dempster who provided the information that led to the Committee's determination that it would not certify petitioner for admission to the bar.[2] App. at 17.

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[2] The notice stated that the Committee was concerned "about allegations of bias and/or dishonesty made against Judge John Garrett Penn, and court reporters Harry Deustch and S. Popejoy, and what appear to be allegations by you of bad faith on the part of Judge W. Bryant, all made during the course of Reshard v. Burnley, U.S.D.C. D.C. Civ. No. 87-2794 JGP, as well as charges you are said to have made during the course of Reshard v.

Britt, et al., U.S.D.C. N.D. Fla., No. TCA 85-7216." App. at 17-19. Petitioner notified the Committee that several federal statutes, 28 U.S.C. Sections 144, 352, 372, and 455 authorize complaints against judges and court reporters on February 11, 1991. (Record at 288). App. at 22-23. Petitioner also cited D.C. Bar Rules of Professional Conduct, Rules 1.3, 3.2(b), 3.3, 3.4, 3.5 (a) & (b), and 8.3. App. at 27-31.

The Committee claims that the full Committee voted to issue the February 5, 1991 notice of noncertification of petitioner for admission to the Bar without a formal hearing. (See, App. at 9, Note 2). The fact is Committeeperson Fort first considered recusal based on Petitioner's February 11 letter and then Fort read Petitioner's file for the first

time. (Record at 293). She then stated that her only involvement in the case was to hear the subcommittee's report. Thus, no vote by the full committee was taken.

Please note that in Reshard v. Burnley, the issues grew out of the same set of operative facts and should be considered as one incident. Material information contained in an order of denial of a preliminary injunction to prohibit the dismissal of petitioner on January 29, 1988 and contained in the transcript were not true and correct. Some of the incorrect text contained in the order and transcript were made by Judge Penn on January 28. Another issue involved a backdated order and a Motion by the Defendant Burnley that was inserted in the record after the fact. Petitioner sought a Motion to

On March 13, 1991, the Committee issued a renewed Notice that referred to Rules 3.1 and 3.5 (c) of the D.C. Bar Rules of Professional Conduct. App. at 19-20.

Petitioner filed Petition for Review and Declaratory Judgment on April 12, 1991. (Record at 295). The petition urged the Court of Appeals to interpret the applicable constitutional provisions of freedom of speech

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Penn and the correction of the transcripts of proceedings on the loss of job. Judge Bryant acted as a mediator for the issue of job termination in April 1988, and told Petitioner that she should have been satisfied for having such a good job, that she had ruin her career by bringing the case, and that she was no "spring chicken." Thus, there is only one incident plus the Paul Rayborn court reporter issue in Reshard v. Britt.

and due process of law. Emphasis Added.

After the time in which to respond had expired, the Committee filed a Motion to Dismiss on June 6, 1991. App. at 4-5. It stated that petitioner had made an improper attempt to "bypass Committee scrutiny of her character and fitness to practice law contrary to D.C. App. R. 46(g)(3)."

On August 16, 1991, the Court of Appeals dismissed the petition without specifying a legal position. App. at 15. Presumably, the Committee and Court designated the Petition for Review No. 91-396 as interlocutory in nature. On October 1, 1991, petitioner filed a Motion for Rehearing en banc and in the alternate, by the panel. It was denied on December 16, 1991. App. at 13-15.

The Supreme Court denied a Motion for an Extension of Time in Which to file a writ of

certiorari on March 20, 1992. App. at 12-13.

On February 5, 1991, the Committee renewed its notice for a formal hearing. Petitioner declined, stating that she had met the burden of proof for admission and cited the constitutional issues. See Rule 46 (e) App. at 25. The Committee automatically withdrew the application for admission on April 20, 1992. App. at 7.

Petitioner filed a Petition for Review with the District of Columbia Court of Appeals on June 1, 1992. Chief Judge J. Rogers ordered the Committee to file its Recommendations on June 29, 1992. App. at 11. This order effectively canceled the Committee's contention that the application was withdrawn.

On August 3, 1992, the Committee filed its Recommendations. App. at 1-11. The

Committee still argued that the constitutional issues, freedom of speech and due process of law, were being relitigated and that the application had been withdrawn. App. at 8. It is well settled law that the failure to grant an interlocutory decision does not result in finality. (Judicial Notice).

On September 14, 1992, a three-judge panel denied the application for admission to the Bar. App. at 1.

Petitioner received a copy of the September 14, 1992 Order on November 23, 1992.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. THE DENIAL OF PETITIONER'S APPLICATION FOR MEMBERSHIP IN THE DISTRICT OF COLUMBIA BAR BECAUSE SHE CRITICIZED A FEDERAL JUDGE AND CORRECTED A COURT REPORTER'S TRANSCRIPTION VIOLATES THE FIRST AMENDMENT GUARANTEE OF FREEDOM OF SPEECH.

The right to speak freely without fear of governmental reprisals is protected by the First Amendment. App. at 20. Gentile v. State Bar of Nevada, ____U.S.____, 111 S.Ct. 2720, 115 L.Ed.2d 888 (1991). Under the principles enunciated by this court, the State must have a compelling governmental interests in order to overcome a challenge pursuant to the First Amendment guarantee of freedom of political speech. Id. In Gentile, a State rule was held to be unconstitutionally vague as applied in the restriction of lawyers from making extrajudicial statements which were

critical of the government during the pendency of a criminal case. Id.

Here, petitioner filed an application for admission to the District of Columbia Bar on July 31, 1989. Rule 46 (f)(1), D.C. App. R. states: "In determining the moral character and general fitness of an applicant for admission to the Bar, the Committee may act without requiring the applicant to appear before it to be sworn and interrogated." App. at 25. However, the Committee refused to certify her admission on February 5, 1991, without a hearing and without a vote by the full committee. Emphasis Added.

When the Committee was ordered to issue a final determination on August 3, 1992, it recommended to the District of Columbia Court of Appeals that her application be denied. The following vague assertion began the

process which led to petitioner's denial of admission to the District of Columbia Bar by the court of appeals on September 14, 1992. App. at 1.

> "The Committee has concerns about your fitness to practice law growing out of the nature of the charges you have made against judges and court reporters in litigation you have conducted." App. at 18.

The primary case in issue regarding the Committee's position is Reshard v. Burnley, supra, a racial discrimination case against the United States Department of Transportation, under 42 U.S.C. 2000(e)(16) et. seq. By virtue of the fact that the defendant is the United States Government together with the judiciary defines the speech in issue as protected political speech. Id.

Accordingly, this Petition presents an important question regarding the protection of freedom of political speech by lawyers, where statements of improper conduct by a judge and court personnel are made intrajudicially. The statements made were presented in conformity with federal law and State rules which govern their conduct. In Gentile, the Court resolved the issue of freedom to make extrajudicial speech that is critical of the government. Now, the Court should complete this important component of the First Amendment guarantee of the freedom of political speech in the legal community.

A. IF CRITICIZING A JUDGE AND CORRECTING A COURT REPORTER, PER SE, REQUIRE A FORMAL HEARING AND DENIAL OF BAR MEMBERSHIP, FREEDOM OF SPEECH IS RESTRICTED.

Freedom of speech would be infringed by the Committee and the Court of Appeals when applicants are required to appear at a formal hearing simply because the nature of the charges against a judge or court reporter involve honesty and bias. App. at 18. Under this approach, potential applicants would be discouraged from bringing valid claims against such officials for fear that not only would their bar application be subjected to undue scrutiny and denial of admission, but their reputations and good name would be blemished. Further, officials would believe that their conduct would not be challenged. This certainly would lead to diminished respect for the judicial system by the public and

inefficient administration of justice. According to the court of appeals, these are stated goals of the principles enunciated in the good moral character and general fitness as it relates to the practice of law in the District of Columbia. In re Manville, 494 A.2d 1289 (D.C. 1985).

Hence, the potential chilling effect of unwarranted formal hearings and the exclusion of applicants who have the courage to redress complaints involving the judiciary is too high a price. Therefore, the Court should grant this petition for a writ of certiorari in order to protect lawyers when they are confronted with improper conduct and to encourage them to seek redress within the judicial system. Such speech should not be restricted under the circumstances presented here where the potential for uneven

application under vague interpretations of Rule 46 by the District of Columbia Court of Appeals and the Committee is apparent.

B. NO COMPELLING GOVERNMENTAL INTERESTS WILL BE ADVANCED BY THE DENIAL OF THE APPLICATION.

The Committee has not advanced a reasonable argument in support of the government's interests. It asserts that it wishes to explore whether petitioner's conduct "raises questions about your ability to comply with the Rules of Professional Conduct, particularly Rules 3.1 (Meritorious Claims and Contentions) and 3.5 (c) (Conduct Intended to Disrupt a Tribunal)." App. at 19-20.

No nexus between the conduct of petitioner and the stated concerns have been specifically identified as being improper. Nor was there a balancing of competing governmental interests contained in Rules 1.3, 3.2(b), 3.3, 3.4, 3.5. and 8.3 or appropriate federal law. App. at 27-31. The Committee

does not identify a single factor which is said to lack merit. Instead, in an informal meeting on April 22, 1992, Committee's Counsel, Charles Reischel, told Petitioner that the Committee did not believe that her complaints were untruthful. He stated that they found it strange that similar claims (incorrect transcripts) had arose in two separate cases, and that was the basis for the request for a formal hearing and subsequent denial of petitioners admission to the District of Columbia Bar.

It is well settled law that the First Amendment prevents the use of power to investigate at will. Degregory v. Attorney General of New Hampshire, 383 U.S. 825, 829, 86 S.Ct. 1148, 1151 (1966). Clearly this hearing would amount to an investigation without any specific indication that the

applicant has acted improperly, other than a vague assertion that the nature of the charges define petitioner's conduct. Other court personnel and even the judges would be potential witnesses. Material evidence is in possession of the respective courts. Even with the subpoena power of the Committee, it is not the appropriate forum to address a full scale formal hearing where the burden of proof must be supported solely by petitioner under Rule 46 (e), D.C. App. R. App. at 25.

Additionally, section 753(b), Title 28 of the United States Code requires "The original notes or other original records and the copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge." App. at 23. Petitioner requested such evidence but no court in either case has ever

permitted her to inspect such evidence. It should be noted that why a court reporter's transcription is prima facie correct under this section, there is a rebuttal presumption. See United States v. Smith, 453 F.2d 149 (5th Cir. 1970).

Consider also that there has been no disruption of a tribunal. Petitioner filed a Motion to Disqualify Judge Penn in 1989 under 28 U.S.C. 144. App. at 22. He has not resolved the Motion yet.

The Committee has relied on In re Demos, 579 A.2d 668 (D.C. 1990) as a basis for asserting that petitioner has disrupted a tribunal. The facts here are distinguishable. Demos' charges had been proven to be unsubstantiated and an Order of Contempt had been filed. Id. Demos also refused to show remorse for the improper conduct. Id. There

has been no preliminary or otherwise determination of the facts that petitioner made unsubstantiated claims. Petitioner's conduct has been orderly and in conformity with judicial decorum.

In light of these factors, petitioner's freedom of speech must be protected. The Supreme Court stated the following in Gentile:

> "At the very least, our cases recognize that disciplinary rules governing the legal profession cannot punish activity protected by the First Amendment, and that First amendment protection survives even when the attorney violates a disciplinary rule he swore to obey when admitted to the practice of law. See e.g., In re Primus, 436 U.S. 412, 98 S.Ct. 1893, 56 L.Ed.2d 417 (1978); Bates v. State Bar of Arizona, Supra. We have

not in recent years accepted our colleagues' apparent theory that the practice of law brings with it comprehensive restrictions, or that we will defer to professional bodies when those restrictions impinge upon First Amendment freedoms." Gentile v. State Bar of Nevada, 111 S.Ct. 2720, 2734.

Accordingly, the Committee and District of Columbia Court of Appeals failure to admit Petitioner to the District of Columbia Bar infringes upon the First Amendment.

C. VAGUE APPLICATION OF THE "GOOD MORAL CHARACTER AND GENERAL FITNESS TO PRACTICE LAW" STANDARD OF ADMISSION IS CONTRARY TO PRINCIPLES OF FREEDOM OF SPEECH.

Because the government has applied the standard of good moral character in an obscure manner, it is difficult to discern the pattern of its application of this principle to the admission to the Bar. It has stated that the goal is to protect prospective clients and to assure the ethical, orderly, and efficient administration of justice. In re Manville, 494 A.2d 1289. Yet, the Committee did not make a preliminary determination of improper conduct by petitioner that is consistent with the stated principle and goals.

Additionally, other applicants are not required to routinely provide information about cases they have handled on the application form. Petitioner advised the

Committee about Reshard v. Burnley at an informal meeting with a subcommittee on June 20, 1990. Counsel, Reischel, then collaborated with William Dempster, the Assistant U.S. Attorney assigned to the case, who is involved personally in the issues raised by Petitioner against Judge Penn.

More specifically, both William Dempster and James Burnley were admitted to the Bar under the same section that petitioner seeks, without a formal hearing. Mr. Burnley was admitted on December 29, 1990, six months after petitioner and the Committee had discussed the role of Burnley in preventing petitioner from obtaining employment.

Justice Kennedy's discussion that vague application of regulations leads to discriminatory enforcement is instructive.

"The prohibition against vague

> regulations of speech is based in part on the need to eliminate the impermissible risk of discriminatory enforcement, Kolender v. Lawson, 461 U.S. 352, 357-358, 361 (1983); Smith v. Goguen, 415 U.S. 566, 572-573 (1974), for history shows that speech is suppressed when either the speaker or the message is critical of those who enforce the law. 111 S.Ct. at 2734.

If conviction of homicide, per se, does not require denial of application for admission to the Bar, surely the filing of a Motion to Disqualify a federal judge pursuant to standards set forth in federal statute, should not require a formal hearing or denial without cause. See In re Manville, 494 A.2d 1289. Section 144 of the United States Code, Title 28 requires that an Affidavit of

personal prejudice and bias is valid, unless it is specifically found to be deficient. App. at 22-23. The Committee has not alleged that petitioner's Affidavit of Bias is invalid.

In another case, the District of Columbia Court of Appeals found that an applicant satisfied the burden of proving good moral character even though he was lacking in candor and was evasive in certain of his responses to questions. In re Baker, 579 A.2d 676 (D.C. 1990). That applicant refused to provide copies of tax forms he filed between 1980 and 1985, as requested by the Committee. Id.

These examples together demonstrate the vagueness and wide range of circumstances in which the Court of Appeals has approved good moral character and fitness to practice law.

Accordingly the court of appeals' action

in the case in issue is not supported by prior precedent and, as applied, its admissions policy violates freedom of political speech.

II. PETITIONER'S APPLICATION WAS DENIED IN VIOLATION OF DUE PROCESS OF LAW

A state court cannot exclude a person from admission to its Bar if its actions contravene due process of law or equal protection of the law under the Fourteenth Amendment. Schware v. Board of Bar Examiners of N.M., 353 U.S. 232, 238-239 (1958). The qualifications of good moral character must have a rational basis to the applicants fitness to practice of law. Id. Lack of due process of law and equal protection under the law by the Committee and District of Columbia Court of Appeals led to arbitrary, capricious, and discriminatory decisions to hold a formal hearing and to deny admission to the Bar.

A. PETITIONER'S APPLICATION WAS DENIED IN VIOLATION OF RULE 46 (g).

The District of Columbia Court of Appeals was required to issue an order to show cause why petitioner's application for admission to the bar should not be denied. Rule 46(g)(2) states: "After receipt of a Committee report, if the court proposes to deny admission, the court shall issue an order to the applicant to show cause why the application should not be denied." App. at 26-27. No such order was issued. Thus, the court violated due process of law.

B. THE COMMITTEE'S RECOMMENDATIONS ARE ARBITRARY AND CAPRICIOUS, NOT SUPPORTED BY THE RECORD, AND THE COURT SHOULD NOT HAVE GIVEN ANY DEFERENCE TO THE COMMITTEE'S RECOMMENDATIONS.

It appears that the District of Columbia Court of Appeals completely adopted the Committee's recommendations regarding the conclusions of law in its September 14, 1992 Order of Denial. This is contrary to that court's established principles of review.

Whether an applicant shall be admitted to the Bar of the District of Columbia is for the District of Columbia Court of Appeals to decide. In re Manville, 494 A.2d 1289, 1292. That court held that it does not have to defer to the Committee's legal conclusions that an applicant has failed to demonstrate good moral character. Id. The Committee's recommendation that the application be denied should not have been accepted in deference to

the Committee.

Further, the court of appeals must review the entire record in order to determine if findings of fact and conclusions of law are unsupported by substantial evidence in the record. See In re Watts, 557 A.2d 601, 603 (D.C. 1989)(too little weight was given by the Committee to Affidavits supplied on behalf of the applicant). The Manville Court stated: "Our deference to the Committee's factual findings must be measured both by our ultimate responsibility to make the decision at hand and by the ex parte nature of the process by which the Committee makes its findings." 494 A.2d at 1293.

In this regard, the Committee failed to consider important aspects of the record and applicable law. See Arkansas v. Oklahoma, U.S._____, 112 S.Ct. 1046, 117 L.Ed.2d 239

(1992). Petitioner has already discussed issues supra regarding the withholding of the audio tapes by the court reporters and courts, the internal information held by the judiciary, the scope of the witness list, the admission of Burnley and Dempster without a formal hearing, and other matters which apparently were not properly considered by either the Committee or the court of appeals.

The lack of findings of fact as they specifically related to complaints against judges and court reporters in issue on the one hand, and "the good moral character and general fitness to practice to law" and the balancing of Rules 1.3, 3.2(b), 3.4, and 8.3, with Rules 3.1 and 3.5(c) of the District of Columbia Rules of Professional Conduct on the other, renders the legal conclusion to deny the application for admission as a violation

of due process of law. Accordingly, the Committee's recommendations and the court's denial of admission to its Bar were arbitrary and discriminatory under these facts.

In summary, this Petition should be granted because important constitutional provisions of freedom of speech and due process of law within the legal community must be preserved to protect the integrity of the judiciary and to advance the orderly, ethical administration of justice.

Respectfully submitted,

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APPENDIX

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 92-SP-659 SEPTEMBER 14, 1992

C. CORNELIA RESHARD,
Petitioner,

V.

COMMITTEE ON ADMISSIONS
OF THE DISTRICT OF COLUMBIA
COURT OF APPEALS,
Respondent.

BEFORE: Terry, Schwelb, and King, Associate Judges.

ORDER

On consideration of the petition for review, the record and recommendation of the Committee on Admissions there to, it is

ORDERED that the petition is denied.

PER CURIAM

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DISTRICT OF COLUMBIA COURT OF APPEALS
COMMITTEE ON ADMISSIONS

No. 92-SP-659 AUGUST 3, 1992

In re

C. Cornelia Reshard, Applicant.

RECOMMENDATION OF THE COMMITTEE ON ADMISSIONS

Connie Cornelia Reshard is a member of the Bar of the Commonwealth of Pennsylvania who seeks admission to the Bar of this Court pursuant to D.C. App. R. 46 (c)(3)(ii). She has filed a petition with the Court of Appeals requesting that she be admitted without the formal hearing that the Committee has determined is necessary to assess her fitness to practice law.[1] The Court has asked the Committee for a recommendation. The Committee

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[1] As a result of preliminary matters raised by Ms. Reshard, Mrs. Fort recused herself on this case and has taken no part in the Committee's deliberations.

recommends that her petition be denied, on two grounds. First, the Court has previously ruled against her on two of the same issues she is now raising, in ruling on the petition she filed last year. Second, the argument she makes on the remaining issue is directly contrary to the express terms of the Rule.

BACKGROUND

In the course of investigating Ms. Reshard's background, the Committee discovered that, in a relatively brief period, in cases she litigated pro se, she had made allegations of bias and/or dishonesty against two federal judges and three court reporters. The Committee refused to certify her admission without a formal hearing at which it could explore these allegations. The Committee also informed her that, if she chose, Ms. Reshard could put on evidence of her fitness to practice.

Ms. Reshard filed a petition for review with this Court, arguing that the Committee had no permissible basis for requiring that she undergo a hearing in order to be admitted. See Connie C. Reshard v. Committee on Admissions, No. 91-396. The Committee moved to dismiss the petition, arguing:

> Ms. Reshard had made allegations of bias and/or dishonesty against three different court reporters and two different federal judges. The Committee believes this conduct raises questions as to Ms. Reshard's fitness to practice law, and wishes to investigate her conduct further at a formal hearing at which she will be permitted an opportunity to explain her conduct, and, if she chooses, produce other evidence of her fitness and good character.

Ms. Reshard's petition to this Court is based on the premise that it is self-evident that her numerous allegations of bias and/or dishonesty by judges and court reporters were made in good faith and with justification. In the Committee's view, that is not clear, but may become so at the formal hearing.

We submit that an examination of this matter on the record is necessary to provide the Committee and the Court assurance of this applicant's fitness. Accordingly, her attempt to bypass the Committee's process for creating a record should be rejected and her petition should be dismissed.

Motion to Dismiss at 1-2; emphasis supplied.

On August 15, 1991, the Court dismissed

the petition for review. Ms. Reshard thereupon filed a petition for rehearing and/or rehearing en banc, arguing that the Committee had no factual basis for requiring a hearing and that its decision to do so penalized her exercise of First Amendment rights. On December 16, 1991, the Court denied both her petition for rehearing and her alternative request for an en banc review.

Thereafter, Ms. Reshard tried to seek review by the Supreme Court of the United States, but was unable to secure the time she believed she needed to do so. She represented to the Supreme Court that she sought further review because "by granting a hearing without reasonable suspicion or probable cause that the charges were 'knowingly false' would have chilling effect upon future applicants if this protected political speech is subject to undue scrutiny by the Committee." Motion for

Enlargement of Time to Docket Appeal, served March 16, 1992.

After the Supreme Court denied Ms. Reshard the time she sought to raise these issues, she filed with the Committee a memorandum which asserted that she would neither appear for formal hearing nor withdraw her application. The Committee advised her, by letter dated April 20, 1992, that, by operation of D.C. App.R. 46(f)(1), if she did not request a formal hearing, her application for admission would be "deemed withdrawn."

Thereafter, on June 1, 1992, Ms. Reshard filed her present petition for review, No. 92-SP-659. It again challenges the Committee's refusal to certify her admission without a formal hearing as arbitrary and in violation of her First Amendment rights. Petition (Pet.) at 2. It also argues that the Committee cannot "withdraw" an application

"when the applicant expressly states that the application is not withdrawn."

DISCUSSION

Ms. Reshard's petition should be denied. Two of the three issues she now seeks to raise -- whether the Committee's insistence on a formal hearing is arbitrary or violates her First Amendment rights -- were squarely raised in her 1991 petition and the Court's denial of her prior petition necessarily held that the Committee could nevertheless require. Ms. Reshard should not be permitted to relitigate these same issues.

The other issue Ms. Reshard raises is frivolous. She argues that the Committee is powerless to consider her application withdrawn over her objection. However, Rule 46 (f)(1) specifically provides that, where the Committee is unwilling to certify an applicant, the applicant has only two choices:

to withdraw the application or to request a hearing. It also specifically provides that: "If the applicant fails to file a timely request for a hearing, the applicant's application shall be deemed withdrawn." Thus, under the express terms of the Rule, Ms. Reshard's application has been "deemed withdrawn." Accordingly, Ms. Reshard's petition for review should be denied.[2]

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[2] Ms. Reshard's petition makes several other arguments which require only brief treatment. She asserts that the full Committee has never voted on her application because one of the Committee members (Mrs. Fort) had not read the file until February 13, 1991, and the initial notice to her of a formal hearing was dated February 5, 1991. Pet. at 6. However, Mrs. Fort did not read the file because she had recused herself; and, in any event, the Committee's March 13, 1991,

Respectfully submitted,

/s/

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letter reflects on its face that the question had been "circulated to the members of the Committee . . . ." In fact, the full Committee (except Ms. Fort) has repeatedly reaffirmed that Ms. Reshard's application requires a formal hearing.

Ms. Reshard also suggests that the Committee's decision is ultimately based on what "other people had told the Committee . . . ." Id. at 5. This assertion is based on her interpretation of what Committee Counsel allegedly said to her in an informal meeting in April 1992. The Committee stated its grounds for requiring a hearing in its written notices to Ms. Reshard in 1991 and its decision, based on those grounds, is what the Court has previously affirmed.

Catherine B. Kelly
Chairman
Committee on Admissions

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DISTRICT OF COLUMBIA COURT OF APPEALS

No. 92-SP-659 JUNE 29, 1992

C. CORNELIA RESHARD,
Petitioner,

V.

COMMITTEE ON ADMISSIONS
OF THE DISTRICT OF COLUMBIA
COURT OF APPEALS,
Respondent.

ORDER

On consideration of the petition for review filed in this case, it is

ORDERED that this matter is referred to the Committee on Admissions for its recommendation as to whether the relief sought by petitioner should be afforded by this Court.

BY THE COURT:

/S/
JUDITH W. ROGERS

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SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER
Clerk of the Court

March 20, 1992

Ms. Connie Reshard
(address omitted)

Re: Connie Reshard v. Committee on Admissions for the District of Columbia Court of Appeals, Application No. A-699

Dear Ms. Reshard:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to the Chief Justice, who on March

20, 1992, endorsed thereon the following:

"Denied 3/20/92 WHR"

Very truly yours,
William K. Suter, Clerk

By /s/
Loretta S. Ruffin
Assistant Clerk

# # # # # # #

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 91-396 DECEMBER 16, 1991

CONNIE RESHARD,

Petitioner,

V.

COMMITTEE ON ADMISSIONS
FOR THE DISTRICT OF COLUMBIA
COURT OF APPEALS,

Respondent.

BEFORE: Rogers, Chief Judge, Ferren*, Terry, Steadman, Schwelb, Farrell, Wagner*, and King, Associate Judges, and Newman*, Senior Judge.

ORDER

On consideration of the petition for rehearing and/or rehearing en banc, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc it is

FURTHER ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

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DISTRICT OF COLUMBIA COURT OF APPEALS

No. 91-396 AUGUST 16, 1991

CONNIE RESHARD,

Petitioner,

v.

COMMITTEE ON ADMISSIONS
FORT THE DISTRICT OF COLUMBIA
COURT OF APPEALS,

Respondent.

BEFORE: Ferren, Steadman, and Wagner, Associate Judges.

ORDER

On consideration of the petition for review, the supplement to the petition for review, and the motion of respondent to dismiss the petition for review, it is

ORDERED that the motion is granted and this petition for review is dismissed.

PER CURIAM

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DISTRICT OF COLUMBIA COURT OF APPEALS

COMMITTEE ON ADMISSIONS
500 Indiana Avenue, N.W.
Washington, D.C. 20001

April 30, 1990.

CONNIE CORNELIA RESHARD, ESQ.
700 Seventh Street, S.W. #725
Washington, D.C. 20024

RE: M31001

Dear Ms. Reshard:

This is with reference to your application for admission to the Bar of the District of Columbia Court of Appeals.

A subcommittee of the Committee on Admissions wishes to meet with you on Wednesday, June 20, 1990, at 5 P.M., concerning the responses on your application, your bankruptcy petition, and student loan obligations. You should bring with you any relevant documentation.

You should report to the Attorney's Waiting Room located adjacent to the District of Columbia Court of Appeals Courtroom on the

sixth floor of the District of Columbia Courthouse, 500 Indiana Avenue, N.W., in Washington, D.C.

Please confirm your availability for this informal session.

Sincerely,
/s/
Clare Marie Root
Director of Admissions

# # # #

DISTRICT OF COLUMBIA COURT OF APPEALS
COMMITTEE ON ADMISSIONS

February 5, 1991

CERTIFIED MAIL
Ms. C. Cornelia Reshard, Esq.
700 Seventh Street SW, #725
Washington, D.C. 20024

RE.: Notice Pursuant to D.C. App. R. 46(f)(1)

Dear Ms. Reshard:

After conducting a preliminary investigation of your application for admission to the Bar of the District of Columbia without examination, the Committee on

Admissions is unwilling to certify your application without a formal hearing.

The Committee has concerns about your fitness to practice law growing out of the nature of the charges you have made against judges and court reporters in litigation you have conducted. These include allegations of bias and/or dishonesty made against Judge John Garrett Penn, and court reporters Harry Deutsch and S. Popejoy, and what appear to be allegations by you of bad faith on the part of Judge W. Bryant, all made during the course of Reshard v. Burnley, U.S.D.C., D.C. Civ. No. 87-2794 JGP, as well as charges you are said to have made against court reporter W. Paul Rayborn, during the course of Reshard v. Britt, et. al., U.S.D.C., N.D. Fla., No. TCA 85-7216.

You are advised that, pursuant to D.C. App. R. 46 (f)(1), you may withdraw your

application for admission or a request a formal hearing. If you wish to request a formal hearing, you must do so within 30 days of the date of this notice.

Sincerely,
/s/
Charles L. Reischel

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DISTRICT OF COLUMBIA COURT OF APPEALS
COMMITTEE ON ADMISSIONS

March 13, 1991

CERTIFIED MAIL
C.CORNELIA RESHARD, ESQ.
700 Seventh Street, S.W. #725
Washington, D.C. 20024

RE.: Renewed Notice pursuant to D.C. App. R. 46(f)(1)

Dear Ms. Reshard:

Your February 11, 1991, letter to me has been circulated to the members of the Committee on Admissions. The Committee has asked me to direct your attention to In re Demos, 579 A.2d 668 (D.C. 1990) (en banc), where the Court indicated that an applicant's

history of making allegations of bias against officials who are presumably impartial, without substantial justification therefor, is relevant to the question of the applicant's fitness to practice law.

The Committee wishes to explore with you, among other things, the bases you had for making such charges and whether your conduct of that or other litigation might raise questions about your ability to comply with the Rules of Professional Conduct, particularly Rules 3.1 (Meritorious Claims and Contentions) and 3.5 (c) (Conduct Intended to Disrupt a Tribunal).

You are advised that the 30 days in which you may choose to request a formal hearing or withdraw your application, pursuant to D.C. App. R. 46 (f)(1), will run from the date of this notice.

Sincerely,
/s/

Charles L. Reischel
Counsel, Committee on Admissions

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UNITED STATES CONSTITUTION

FIRST AMENDMENT: Congress shall make no law . . . abridging the freedom of speech . . . .

FOURTEENTH AMENDMENT: [N]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . . .

FEDERAL STATUTES:

28 U.S.C. 1257: (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the

Constitution, treaty, or laws of the United States . . . . (b) For the purposes of this section, the term "highest court of a State "includes the District of Columbia Court of Appeals.

28 U.S.C. 455: (a) any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding . . . .

28 U.S.C. 144: Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him

or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists . . .A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

28 U.S.C. 753(b): The original notes or other original records and the copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge.

RELEVANT SECTIONS OF D.C. COURT OF APPEALS RULE 46, D. C. RULES ANNOTATED, (1991 ED.)

Rule 46(c)(3)

Any person may, upon proof of good moral character as it relates to the practice of

law, be admitted to the Bar of this court without examination, provided that such person:(ii) (A) Has been awarded a J.D. or LLB. degree by a law school which, at the time of the awarding of the degree, was approved by the American Bar Association which the State or territory deems to have been taken as a part of such examination . . . Has been admitted to the practice of law in a state or territory of the United States upon the successful completion of a written bar examination and has received a scaled score of 133 or more on the Multistate Bar Examination.

Rule 46 (d)

Moral character and general fitness to practice law. No applicant shall be certified for admission by the Committee until the applicant demonstrates good moral character and general fitness to practice law. The Committee may, in its discretion, give

notice of the application by publication in a newspaper or by posting a public notice.

Rule 46(e)

Quantum and burden of proof. The applicant shall have the burden of demonstrating, by clear and convincing evidence that the applicant possessed good moral character and general fitness to practice law in the District of Columbia.

Rule 46(f)(1)

Hearing by the Committee. In determining the moral character and general fitness of an applicant for admission to the Bar, the Committee may act without requiring the applicant to appear before it to be sworn and interrogated. If the Committee is unwilling to certify an applicant, the applicant has the choice of withdrawing the application or requesting a hearing. Notice shall be given by certified mail at the address appearing on

the application. Within 30 days from the date of the notice, the applicant may file with the Committee a written request for a hearing. If the applicant fails to file a timely request for a hearing, the applicant's application shall be deemed withdrawn. If the applicant requests a hearing within the 30-day period, the request shall be granted and the hearing shall be conducted by the Committee under the following rules of procedure: . . . .

Rule 46 (g) Review by the Court

(1) The Committee shall deliver a report of its findings and conclusions to the court for its approval in the case of any applicant for admission after a formal hearing.

(2) After receipt of a Committee report, if the court proposes to deny admission, the court shall issue an order to the applicant to show cause why the application should not be denied. Proceedings under this Rule shall be

heard by the Court on the record made by the Committee on Admissions.

(3) Except for the review by the Court provided in this section(g), no other review by the Court of actions by or proceeding before the Committee shall be had except upon a showing (1) of extraordinary circumstances for instituting such review and (2) that an application for relief has been previously made in the first instance to the Committee, or that an application to the Committee for the relief is not practicable.

RELEVANT SECTIONS OF DISTRICT OF COLUMBIA BAR RULES OF PROFESSIONAL CONDUCT. D.C. Court of Appeals Rules of Court Annotated, 1991 ed.

Rule 1.3: Diligence and Zealous Representation

(a) always shall represent a client zealously and diligently within the bounds of the law.

Rule 3.1: Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law.

Rule 3.2: Expediting Litigation

(a) In representing a client, a lawyer shall not delay a proceeding when the lawyer knows or when it is obvious that such action would serve solely to harass or maliciously injure another;

(b) A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.

Rule 3.3: Candor Toward the Tribunal

(a) A lawyer shall not knowingly

(1) Make a false statement of material fact or law to a tribunal;

(3) Fail to disclose to the

tribunal legal authority in the controlling jurisdiction not disclosed by opposing counsel

(4) Offer evidence that the lawyer knows to be false, . . .

(d) A lawyer who receives information clearly establishing that a fraud has been perpetrated upon the tribunal shall promptly reveal the fraud to the tribunal unless compliance with his duty would require disclosing of information otherwise protected by Rule 1.6 . . .

Rule 3.4: Fairness to Opposing Party and Counsel. A lawyer shall not:

(a) Obstruct another party's access to evidence or alter, destroy, or conceal evidence, or counsel or assist another person to do so, if the lawyer reasonably should know that the evidence is or may be the subject of discovery or subpoena in any pending or imminent proceeding.

(b) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law.

Rule 3.5: Impartiality and Decorum of the Tribunal. A lawyer shall not:

(a) Seek to influence a judge, juror, prospective juror, or other official by means prohibited by law:

(b) Communicate ex parte with such a person except as permitted by law; or

(c) Engage in conduct intended to disrupt a tribunal.

Rule 8.3: Reporting Professional Misconduct

(a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the

appropriate professional authority;

(b) A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

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